

- (E) *Development* that deviates from the *historical resources* regulations, as described in Section 143.0210.
 - (3) *Subdivision of a premises* that contains *environmentally sensitive lands*, as described in Section 143.0110.
 - (4) *Development* that deviates from any portion of the *environmentally sensitive lands* regulations, as described in Section 143.0110.
 - (5) *Development* for which the *applicant* seeks a deviation from the applicable development regulations as an additional development incentive to a *density* bonus for affordable housing under Section 143.0750.
- (e) A Site Development Permit decided in accordance with Process Five is required for the following types of development.
- (1) In the Airport Approach Overlay Zone, *development* proposals that receive an FAA determination of hazard and that are not exempt, as described in Section 132.0202.
 - (2) In the Airport Environs Overlay Zone, *development* for which a City Council override is requested, as described in Section 132.0302.
 - (3) In the Clairemont Mesa Height Limit Overlay Zone, *development* for which an exception to the height limit is requested, as described in Section 132.1306.

(Amended 4-22-2002 by O-19051 N.S.; effective 10-8-2002.)

[Editors Note: This section only applies outside of the Coastal Overlay Zone. For the corresponding regulation (When a Site Development Permit is Required) within the Coastal Overlay Zone, refer to Land Development Code Section 126.0502, added by City Council on December 9, 1997 by O-18451.]

§126.0503 Decision Processes for Site Development Permits

- (a) Process Three

A decision on an application for a Site Development Permit for the types of *development* listed in Section 126.0502(a), (b) and (c) shall be made in accordance with Process Three. The decision may be appealed to the Planning Commission in accordance with Section 112.0506.

(b) Process Four

- (1) A decision on an application for a Site Development Permit for the types of *development* listed in Section 126.0502(d) shall be made in accordance with Process Four.
- (2) A recommendation of the Historical Resources Board is required prior to the Planning Commission decision on a Site Development Permit when a *historical district* or *designated historical resource* is present.

(c) Process Five

A decision on an application for a Site Development Permit for the types of *development* listed in 126.0502(e) shall be made in accordance with Process Five.

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)

§126.0504 Findings for Site Development Permit Approval

A Site Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0504(a) and the supplemental *findings* in Section 126.0504(b) through (m) that are applicable to the proposed *development* as specified in this section.

(a) Findings for all Site Development Permits

- (1) The proposed *development* will not adversely affect the applicable *land use plan*;
- (2) The proposed *development* will not be detrimental to the public health, safety, and welfare; and
- (3) The proposed *development* will comply with the applicable regulations of the Land Development Code.

(b) Supplemental Findings--Environmentally Sensitive Lands

A Site Development Permit required in accordance with Section 143.0110 because of potential impacts to *environmentally sensitive lands* may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):

- (3) The denial of the proposed *development* would result in economic hardship to the owner. For purposes of this finding, “economic hardship” means there is no reasonable beneficial use of a property and it is not feasible to derive a reasonable economic return from the property.

(j) Supplemental Findings--Clairemont Mesa Height Limit

A Site Development Permit required in accordance with Section 132.1306 because an exception from the Clairemont Mesa height limit is requested may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):

- (1) The granting of an exception will not significantly interfere with public views from western Clairemont Mesa to Mission Bay and the Pacific Ocean within the surrounding area; and
- (2) The granting of an exception is appropriate because there are existing *structures* over 30 feet in height and the proposed *development* will be compatible with surrounding one, two, or three-story *structures*; or the granting of an exception is appropriate because there are topographic constraints peculiar to the land; or the granting of the exception is needed to permit roofline and facade variations, accents, tower elements, and other similar elements and the elements will not increase the *floor* area of the *structure*.

(k) Supplemental Findings--Mobilehome Park Discontinuance

A Site Development Permit required in accordance with Section 132.0702 because a discontinuance of a *mobilehome park* is proposed may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):

- (1) The discontinuance of use of the land for a *mobilehome park* or *mobilehome* spaces will not deprive the community of a needed facility;
- (2) The discontinuance of use of the land for a *mobilehome park* or *mobilehome* spaces, because of the associated relocation plan and conditions that have been applied to the discontinuance, will not be detrimental to the public health, safety, and welfare of persons living in the *mobilehome park*; and

- (3) The use to which the *applicant* proposes to put the property will provide a greater public benefit than continued use of the property as a *mobilehome park* or *mobilehome* spaces.

(l) Supplemental Findings--Deviation for Affordable Housing

A *development* that requires a Site Development Permit in accordance with Section 143.0750 because the *applicant* has requested a deviation from the applicable development regulations as an additional incentive to a *density* bonus for providing affordable housing may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):

- (1) The proposed *development* will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City;
- (2) The *development* will not be inconsistent with the purpose of the underlying zone.
- (3) The deviation is necessary to make it economically feasible for the *applicant* to utilize an *density* bonus authorized for the *development* pursuant to Section 143.0730.

(m) Supplemental Findings - Deviations for Affordable/In-Fill Housing Projects

A development that requires a Site Development Permit in accordance with Section 143.0920 because the applicant has requested a deviation from the applicable development regulations for affordable/in-fill housing projects may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 126.0504(a):

- (1) The proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City;
- (2) The development will not be inconsistent with the purpose of the underlying zone;
- (3) Any proposed deviations are appropriate for this location and will result in a more desirable project than would be achieved if designed in

strict conformance with the development regulations of the applicable zone.

(Amended 6-3-2003 by O-19188 N.S.)

[Editors Note: This section only applies outside of the Coastal Overlay Zone. Ordinance No. O-19188 will not apply within the Coastal Zone until the thirtieth day following the date the Coastal Commission unconditionally certifies this ordinance as a local coastal program amendment. If Ordinance No. O-19188 is certified with suggested modifications, Ordinance No. O-19188 shall be void within the Coastal Zone. For the corresponding regulation (Findings for Site Development Permit Approval) within the Coastal Overlay Zone, refer to Land Development Code Section 126.0504, added by City Council on December 9, 1997 by O-18451.]

§126.0505 Violations of a Site Development Permit

It is unlawful for any person to maintain, use, or develop any *premises* without a Site Development Permit if such a permit is required for the use or *development*, or to maintain, use, or develop any *premises* contrary to the requirements or conditions of an existing Site Development Permit. Violation of any provision of this division shall be subject to the enforcement provisions contained in Chapter 12, Article 1. Violations of this division shall be treated as strict liability offenses regardless of intent.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)